

**METRAPARK LEASE
PICK SIX ENTERTAINMENT, LLC - INDOOR FOOTBALL**

2021 – 2024 AGREEMENT

PARTIES

THIS AGREEMENT MADE AND ENTERED INTO THIS _____ DAY OF _____, 2021, BY AND BETWEEN PICK SIX ENTERTAINMENT, LLC, herein referred to as "Pick Six", and Yellowstone County "the County".

Yellowstone County is a political subdivision of the State of Montana. The County owns and operates MetraPark, a multi-use complex that services the entertainment, trade, athletic, agricultural and educational needs of the region. PICK SIX ENTERTAINMENT, LLC is a Montana corporation, registered to do business in Montana, that owns, operates and manages (team is yet to be named)_____.

PURPOSE

Pick Six desires to lease the First Interstate Arena (Arena) at MetraPark for the presentation of up to six (6) indoor football games each season plus any post-season playoff and/or exhibition games, practice sessions and tryout sessions for a period of three years

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

TERM

The term of this Agreement would be for three (3) years (three seasons), to begin from the date of signing and ending upon conclusion of the 2024 season including post season games if any. Pick Six may, upon notice to the County given within sixty (60) days of the conclusion of the term of the agreement, request a new agreement.

CONSIDERATION

1. The County agrees to lease the Arena to Pick Six for six (6) indoor football games during each of the 2021-2024 regular seasons plus any post-season playoff and exhibition games.
2. **Building Rent for Games.** Pick Six will pay the County a building rent of \$2,500.00 (two thousand, five hundred dollars) per game for use of the Arena for the 2022 season. Rent will increase to \$2,625 for the 2023 season and \$2,750 per game for the 2024 season. The building rent shall be waived for the last home game in each of the 2022, 2023, and 2024 seasons.

2(b) Pick Six shall be the exclusive professional indoor football team for the term of

this Agreement. The County will require a pre-season preliminary schedule for 2022 on or before November 30, 2021. Subsequent years will provide a preliminary schedule on or before November 30 of each succeeding year. The schedule will be subject to negotiation with MetraPark management. In the event of conflict, MetraPark management scheduling decisions will prevail.

3. **Building Rent for Post-season Games/Championship Games.** Subject to subsection 2 above, in the event that Pick Six's team advances beyond regular season play during any of the 2022, 2023, or 2024 football seasons, the same terms and conditions that cover regular season home games shall govern post season and championship play.
4. **Building Rent for Practice Sessions.** Upon availability, Pick Six shall have access to the premises for practice sessions before game days.
5. **Improvement Fee Rate and Paid Tickets.** The following improvement fee rate shall apply for ticket sales at all home games, post-season games and championship games during the term of this agreement.

\$1.25 improvement fee for ticket priced at \$11.00 or less;
\$2.00 improvement fee for ticket priced at \$11.01 - \$39.99;
\$3.00 improvement fee for ticket priced at \$40.00 - \$99.99;
\$4.00 improvement fee for ticket priced at \$100.00 or greater.

Ticket price means collected price (as discounted) of ticket. Promotional practices, such as 2 for 1 tickets, will pay improvement fee based on price paid times 50% or other applicable proration depending on promotion (i.e.) (2) tickets for a regular priced \$16 ticket will pay \$2.50 in user fee. $(2) \times \$1.25 = \2.50 ($\$16/2 = \8 per ticket and therefore \$1.25 user fee for each ticket).

6. In the event the player locker rooms are not cleaned to MetraPark management's satisfaction, either after practice sessions or after games, Pick Six will pay the County the actual cleaning cost as well as any damages per practice session or game when the locker room cleaning is considered unsatisfactory. Actual cleaning cost or damages will be deducted from game settlement.
7. A \$5000 deposit is required and due at signing of the Agreement. Deposit must be paid and the Agreement executed by an authorized Yellowstone County agent before any event is confirmed and may proceed with advertising and ticket sales. Deposit will be refunded upon completion of the term of the Agreement. Should the Agreement be voided or nullified before completion, the deposit will be refunded net of incurred costs.

PREMISES, STAFFING, SERVICES

1. PREMISES: Pick Six shall be permitted the use and occupancy of the following areas on game days:

- a. the Arena;**
- b. two (2) dressing rooms;**
- c. the first aid room;**
- d. the Game Official's dressing room;**
- e. the press box; access to storage in women's restroom west of concourse, upon availability;**
- f. the usual and ordinary building facilities situated in, upon or about the seating section of the building, penalty clock hookup, public address system, scoreboard, thirty second clocks, and player benches. Sound system is available and Pick Six is required to work with in-house sound technician. Pick Six will be billed at user service rate;**
- g. during the football games, twelve (12) permanent parking spaces in back of the building and ten (10) temporary parking permits in front of the building as regulated by MetraPark management;**
- h. parking facilities adjacent to the premises for persons attending all football games are subject to the rules and regulations established by MetraPark management.**

2. STAFFING:

- a. The County shall provide, at Pick Six's sole expense, staffing for public safety including ushers, police/security personnel, door guards, ticket takers, and parking lot attendants (as currently provided by Starplex). These services will be deducted from settlement at invoice cost. The number of personnel for any given football game shall be determined by the mutual consent of the parties. The General Manager of MetraPark shall decide differences of opinion with his decision binding on Pick Six. These rates may be adjusted due to price increases by service provider.**
- b. Pick Six shall arrange for and provide at its sole expense the following staffing: an organist, public address announcer, score board and time clock operators, officials, official scorer, medical personnel and all other officials required by Pick Six. These costs are to be paid directly by Pick Six to the service providers.**
- c. Other outside contracted services provided, at Pick Six's expense, may include**

costs of stagehands, riggers, and/or steward. These services will be deducted from settlement at invoice cost.

- d. Other services provided by MetraPark staff, at Pick Six's sole expense, may include costs such as operators for cameras, sound, loader, or forklift. These services will be deducted from settlement at MetraPark billing rates.

3. SERVICES:

The County, through MetraPark, shall provide the following services in connection with use of the following:

- a. Field installation pursuant to terms and conditions found in paragraph #2, of Miscellaneous Provisions. Pick Six owns the field and the dasher pads as well as any other equipment utilized for arena football games, with the exception of the boards used to support dasher pads and materials used in the construction of Corporate Box Suites. In the event MetraPark provides labor in setting up for practice sessions or games, Pick Six agrees to hold MetraPark and Yellowstone County harmless and agrees to indemnify and defend MetraPark and Yellowstone County relative to any claims the result of injury or damage to any person (spectators or participants) or property from the use of field, dashers, or dasher pads installed by MetraPark labor.
- b. Electrical light, heat, and air conditioning;
- c. Janitorial services will be charged at \$800 per game. Does not include locker room cleaning.
- d. Portable Corporate Box Suites, including set up and tear down; Number of Corporate Box Suites to be mutually agreed upon by both parties; subject to fire code regulations.
- e. A maximum of nine (9) stagehand hours per game.

4. TICKETS AND TICKET OFFICE:

- a. The County, through MetraPark, shall maintain control of the hours and usage of the MetraPark ticket office and shall provide qualified staffing at its own expense. MetraPark shall maintain control of all tickets issued for the purposes of this agreement. MetraPark box office or its authorized agents will sell all season tickets. MetraPark shall also provide at its own expense, ticket printing and box office services.
- b. MetraPark shall offer tickets for sale at the MetraPark box office and other

regular outlets as mutually agreed upon. Skybox suite holders are entitled to purchase tickets consistent with the occupancy rate and any other terms and conditions contained in applicable MetraPark/Sky Box Lease Agreements.

- c. To compensate MetraPark for credit card and ticket processing fees, MetraPark may charge, in addition to the ticket price, reasonable convenience fees, processing fees, and/or other electronic fees or other surcharges (collectively "ticket processing surcharges"), on ticket sales, provided that such ticket processing surcharges are equivalent to those charged on tickets for other MetraPark events or users. These ticket processing surcharges will be retained by MetraPark.
- d. The Box Office Service Fee per game is \$500.

5. COMPLIMENTARY TICKETS/PASS LIST TICKETS:

- a. Complimentary Tickets: The parties agree that Pick Six shall receive complimentary tickets for all home games, all post-season playoff games, and championship games during the term of this agreement. The parties further agree that the first 650 complimentary tickets for each game covered under this Agreement shall be free of charge or cost. Thereafter, every complimentary ticket used over and above 650 complimentary tickets per game shall have an improvement fee associated with it in the amount of \$2.00 per ticket.

In addition to the 650 complimentary tickets mentioned above, Pick Six shall furnish up to 30 complementary tickets to Yellowstone County. Those complementary tickets will also be without fee on the same terms as above. Total complimentary tickets that no improvement fee is charged is 680 tickets.

Complimentary tickets shall be counted by the turnstile count, less paid tickets. The parties recognize that complimentary tickets delivered for a game are sometimes not used, therefore, only actual usage and passage through the turnstile shall be taken into consideration for the count of 650 tickets and for the count of 30 County tickets in the Section, for a total of 680 tickets.

- b. Pass List Tickets: Tickets will not be issued for personnel essential for home games, post-season games and championship games. Instead, Pick Six shall maintain a roster for each home game with the names of personnel essential for any particular game. Said list shall be provided to MetraPark management in advance of each home game and the list will be limited to the following personnel: Owners, coaches, players, cheerleaders, drill teams, half time entertainment, organist, public address announcer, score board operators, time clock operators, officials, official scorer, medical personnel, and all other officials required by Pick Six. Pick Six will tightly control the Pass List so that it is not used as a way to avoid payment of improvement fees or a way to avoid admission charges.

6. **SETTLEMENT:** MetraPark shall operate and be responsible for all admission fees on behalf of Pick Six and shall deposit all such fees in a special account established by MetraPark for that purpose. From said admission fees, MetraPark shall deduct all expenses enumerated above in this agreement, including but not limited to: building rent, cleaning fees, improvement fees on tickets, credit card fees, Starplex Security Services and ambulance or EMT (if applicable), stagehand charges, and other user fees or contracted charges. Any rent, costs, or fees due as established by this agreement shall be a first lien upon such funds. Upon payment of all costs, expenses and rent, the balance of funds shall be paid to Pick Six if a positive balance exists. If a negative balance exists, Pick Six must remit payment to the County. Failure to satisfy settlement constitutes default of this Agreement. For all games, a settlement check shall be available 2 -3 business days (excludes weekend days and holidays) following the game.
7. **SETTLEMENT DISPUTES:** Settlement is not subject to face-to-face negotiation. Should Pick Six have a disagreement about the amount of the settlement referenced above, Pick Six shall direct their concerns to the MetraPark general manager in writing. In the event the parties can not agree to settlement, Pick Six's sole remedy is to bring the dispute to the Board of County Commissioners.
8. **TICKETS:** A ticket manifest listing complete scaling/pricing shall be submitted in duplicate to Pick Six when tickets are printed. MetraPark management shall print tickets in-house. All tickets (season tickets, single game tickets and complimentary tickets) must be printed by MetraPark, no exceptions. The parties agree to sell all tickets at the prices as determined and advertised. MetraPark shall provide Pick Six with a daily advance sales report.
9. **CANCELLATION:** For good cause, The County reserves the right to cancel or change dates of regular season home games during the term of this agreement with forty (40) days notice. In the event that the County, through MetraPark management, or Pick Six determines it is necessary to cancel a home game date or request the Pick Six to shift or otherwise change a date for any regular season home game covered under the terms of this Agreement, for any reason (with the exception of an act of God that would render the arena unsuitable for play) the parties agree to enter into good faith discussions to determine an alternative home game date or otherwise agreeable solution.

MISCELLANEOUS PROVISIONS

1. **PRACTICE TIME:** The County, through MetraPark, shall furnish Pick Six reasonable practice time on day of game from 2:00 p.m. to game time. MetraPark does not guarantee any other practice times and is not obligated to provide practice times.
2. **FIELD INSTALLATION:** Regardless of intended use, (tryout sessions, practice sessions, regular season post-season games), MetraPark shall provide the first 9 (nine)

field installations of the game field for Pick Six. After 9 (nine) field installations, Pick Six will be charged for each additional installation of the field, regardless of use, at the rate of \$1,000.00 (one thousand) for labor involved with each installation. Multiple uses of the field may occur as building schedule allows, but, is not guaranteed. Regardless of intended use and regardless if Pick Six is charged labor for field installation; field installation shall be accomplished solely under the direct supervision and direction of Pick Six.

Installation is calculated each time the complete game or complete practice field is set up in any building, including all pre-season, regular season, post-season usage, and all practice sessions. Pick Six will inspect the field installation including all equipment used to set up for games prior to any usage as to acceptable installation and Pick Six further agrees to indemnify and hold the County and MetraPark harmless for installation, set up, use or condition of the playing field and equipment and any and all injury to any person (spectators or participants) or property that may result from use of said playing field.

3. **SIGNAGE:** Pick Six may place signage in such manner as not to cover up or interfere with any MetraPark signage. Day of game banners will be allowed. All temporary signage must concern football games only. Pick Six may sell signage to merchants, and shall receive all profits associated with said sales.
4. **ADVERTISING AND FINANCIAL INDUSTRY SPONSORS:** Pick Six shall have all rights associated with television and radio broadcasting of all football games. Any additional equipment required to broadcast football games and any additional labor will be at Pick Six's sole expense. The parties agree that Pick Six shall, should they attempt to obtain advertising and sponsorship from persons and companies engaged in the financial or banking industry, will do so without interfering with existing naming rights agreements held by the County.
5. **SOUVENIRS, NOVELTIES AND PROGRAM SALES:** Pick Six may sell only football team and league logo souvenirs, novelties and programs at the Arena regarding football games. All revenue associated from these sales shall go to Pick Six. The County and MetraPark waive the standard 30% to a vendor for the sales.
6. **FOOD AND BEVERAGE SALES:** The County, through MetraPark, shall have the sole right to sell all food and beverages at all football game related activities at MetraPark, including but not limited to all homes games, all post-season games, championship games and any other times Pick Six is utilizing the MetraPark facilities. MetraPark shall receive all revenue associated with all food and beverage sales. MetraPark management shall approve any catering requests by Pick Six. All existing policies and exclusive contracts regarding food and beverage sales at MetraPark shall be strictly adhered to at all times by MetraPark and Pick Six.

7. **FIELD, DASHER PADS, AND PROPERTY INSURANCE:** Pick Six will acquire at their expense indoor arena football field and dasher pads to be used during the term of this Agreement. Pick Six is solely responsible for the condition of the field and dasher pads. Any maintenance or upkeep associated with the field and or dasher pads is the sole responsibility of Pick Six. The County is not responsible for any property damage or loss of football field or dasher pads or other Pick Six equipment. Pick Six will carry any needed property insurance for equipment owned by the team.
8. MetraPark will store field, dasher pads and other equipment owned by Pick Six during the football season. The Parties agree that the County has no responsibility for property damage, loss, theft, vandalism or damage otherwise to the football field, dasher pads or any other equipment belonging to Pick Six while said equipment is being stored at MetraPark. All equipment belonging to Pick Six must be removed from MetraPark immediately following the last game of the season.

LIABILITY INSURANCE & WORKER'S COMPENSATION

Pick Six agrees to carry public liability insurance policy for bodily injury and property damage in the amount not less than \$750,000.00 for each occurrence and (\$1,500,000.00) in the aggregate. The liability policy will cover without limitation the following: spectators whether paid or complimentary, and persons on the Pass List. This coverage shall be in full force and effect for all try-out sessions, practice sessions, games and any post season play. Pick Six shall furnish a copy of said insurance policy to the County and MetraPark and Yellowstone County shall be specifically named as additional insured under said policy. Except to the extent as to those injuries or claims arise out of the structure or conditions of sidewalks or parking lots, Pick Six agrees to provide a defense for and indemnify MetraPark and Yellowstone County relative to any and all claims for damage to property or injury to any person, be it a spectator, participant or guest, including any and all individuals listed on the roster used to keep track of Pick Six, including but not limited to the following: employees, players, coaches, guests and any other persons in attendance at home games and all other personnel in any Pick Six athletic event caused by any act, omission, or neglect of Pick Six.

Pick Six agree to carry worker's compensation insurance and provide proof (worker's compensation policy information page) of such coverage 30 days before the start of each football season. The worker's compensation coverage page shall list MetraPark as a workplace for coverage purposes. Pick Six agrees to carry worker's compensation on all employees, including but not limited to, football players and coaches.

RULES AND REGULATIONS

Pick Six, their agents, employees and contractors shall abide by and conform with all of the provisions of Yellowstone County and all federal, state or local laws, statutes, ordinances, and resolutions which are applicable to the use and occupancy of the premises under this Agreement.

Game Day Playing Conditions: As stated elsewhere in this Agreement, the football playing field, the field, dasher pads, and any other equipment necessary to play football at MetraPark, (with the exception of the boards used to support dasher pads and materials used to assemble Corporate Box Suites) belongs to Pick Six. During the period of this Agreement and during each game controlled by this Agreement, it is agreed that MetraPark leases the football playing area without the right of re-entry. During the period of this Agreement Pick Six shall have exclusive rights to the use of the football playing area. In the event MetraPark shall provide labor of the field for practice or game days, MetraPark workers will work under the direct supervision of Pick Six. It is further agreed that for every time MetraPark has set up the game field, dasher pads and Corporate Box Suites, that prior to game time for each game covered under this Agreement, a representative of MetraPark and a representative of Pick Six will meet to allow Pick Six to inspect the condition of the playing field, including Corporate Boxes. Upon said inspection and prior to Pick Six taking exclusive game day control of the playing field, should Pick Six request changes, repairs or alterations to any component of the playing field, including Corporate Boxes, MetraPark agrees to make the needed changes. Equipment repair or replacement items will be charged to Pick Six. It is understood between the parties that any such labor performed by MetraPark employees relative to preparing the game day playing field to be in acceptable condition once Pick Six assumes control, that all work performed for that purpose shall also be under the direct control and supervision of Pick Six. With the exception of the wooden backboards, dasher pads and material used to construct the portable Corporate Box Suites, any material that Pick Six deems necessary to either initially prepare the playing field or maintain the playing field during the course of any given game, shall be the sole responsibility of Pick Six.

Pick Six agrees that their representatives and agents have inspected the material used to construct the portable Corporate Box Suites, that said material is suitable for said purpose and that neither the material used to construct the Corporate Box Suites or the location of the Corporate Box Suites, how the Corporate Box Suites are situated in relationship to the playing field, represents any danger to players, fans or others as a result of any incidental contact between football players, coaching staff, fans and any other persons during the course of any given football game. Pick Six shall hold MetraPark and the County harmless, and shall indemnify and defend MetraPark and the County for claim or suit the result of any injury or damages incurred thin relationship to installation or use of the Corporate Box Suites.

Any decisions relative to changes, alterations or repairs to the playing field during the course of any given football game during the period of this Agreement shall be at the sole discretion of and under the direct supervision of Pick Six.

TERMINATION

1. This Agreement shall automatically terminate upon the written mutual agreement of the parties.
2. Either party shall be entitled to unilaterally terminate this Agreement if the other party is in default under this Agreement and fails to cure such default within ten (10)

days after notice of default has been given to the defaulting party, provided that this remedy of termination shall be in addition to any other remedies provided by law or under this Agreement.

3. This Agreement shall terminate in the event of Pick Six's dispersion or it ceases its operations.

NONTRANSFERABLE

All rights granted herein to Pick Six are not assignable or transferable in any manner by Pick Six without the express written consent of the County.

DEFAULT

Included but not limited to the following shall constitute a default by Pick Six hereunder:

- a. Default in the punctual remittance of any payment of money required to be made hereunder;
- b. Pick Six fails to perform any of the terms covenants or conditions contained in this Agreement.

REMEDIES ON DEFAULT

Should any default remain uncured for more than fifteen (15) days after written notice thereof to the defaulting party, the other party may:

- a. Specifically enforce, without acceleration, the provisions of this Agreement; or
- b. Cancel the contract; or
- c. Pursue any other legal or equitable remedy permitted by law;
- d. No remedy herein conferred upon or reserved to the County is deemed to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereinafter existing at law, in equity, or by statute.

SEVERABILITY

Any provisions of this Agreement prohibited by law or declared invalid by a court of law shall be invalid and void as to the extent such provision is prohibited by law without invalidating the remaining provisions of this Agreement.

GOVERNING LAW AND VENUE

The laws of the State of Montana shall govern this Agreement. In the event of litigation concerning this Agreement, venue for such litigation shall be in the Thirteenth Judicial District, Yellowstone County, Montana.

NOTICE

Any written notices required or permitted under or related to this Agreement shall be sufficiently made or given if delivered personally or mailed by certified mail, return receipt requested, to the appropriate recipient at their address specified in the first paragraph of this Agreement; provided that either party may change their respective address by giving the other party written notice of such change. Any such notice shall be deemed to have been made or given by the date of personal delivery or a date two (2) days after mailing.

Any modification, alteration, or amendment to terms or conditions of this Agreement must be in writing and any such changes to this Agreement will not be binding on Yellowstone County or MetraPark unless the Yellowstone County Board of County Commissioners agrees to such modifications, alterations, or amendments in writing.

INDEPENDENT PARTIES

This agreement is not intended to create nor shall it be construed as creating a joint venture or partnership.

The parties have executed this Agreement effective _____, 20____.

- (1) PICK SIX ENTERTAINMENT, LLC
5000 Southgate Drive Billings, MT 59101
605-569-0965
- (2) Chairperson
Yellowstone County Board of Commissioners
PO Box 35000
Billings, MT 59107
406-256-2701

PICK SIX ENTERTAINMENT, LLC.

BY: _____

YELLOWSTONE COUNTY BOARD OF COMMISSIONERS

BY: _____
Donald W. Jones, Chair

BY: _____
John Ostlund, Member

BY: _____
Denis Pitman, Member

YELLOWSTONE COUNTY CLERK & RECORDER

BY: _____
Jeff Martin, Clerk & Recorder

DATE: _____